

**IN THE UNITED STATES DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN**

**LAW OFFICE OF MARJORIE RAWLS
ROBERTS, P.C., a United States Virgin
Islands Professional Corporation.
One Hibiscus Alley, St. Thomas
VI 00802-1306**

Plaintiff.

v.

**INTERNAL REVENUE SERVICE,
1111 Constitution Ave., N.W.
Washington, D.C. 20224**

Defendant.

Civ. No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW the Plaintiff, by and through its counsel, to petition this Court, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.*, as amended, for declaratory and injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from Plaintiff the Law Office of Marjorie Rawls Roberts, P.C. (“Plaintiff”), by Defendant, the Internal Revenue Service (“IRS” or “Defendant”).

Jurisdiction and Venue

1. This Court has jurisdiction over the matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this is an action to enforce the FOIA.

2. Venue lies in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

Parties

3. Plaintiff, requester of the agency records that have been improperly withheld, is a professional corporation formed under the laws of and having its only place of business in St. Thomas, United States Virgin Islands.

4. Defendant, the IRS, is a component entity of the Department of the Treasury, which is a Department of the Executive Branch of the United States Government. The IRS has its headquarters in Washington, D.C. The IRS is an “agency” within the meaning of 5 U.S.C. § 552(f). The IRS has possession and control of the records requested by Plaintiff.

Plaintiff’s FOIA Request

5. On February 3, 2009, Plaintiff through undersigned counsel made its FOIA request. Attached hereto and incorporated by reference as “Exhibit A” is a true and correct copy of the February 3rd, correspondence.

6. An agency must respond to a request for documents pursuant to 5 U.S.C. § 552(a)(6)(A)(i) within twenty (20) working days. The twenty (20) day statutory deadline for the IRS to respond was March 19, 2009.

7. On March 16, 2009, the IRS requested a ten day extension of the March 19, 2009, deadline. Attached hereto and incorporated by reference as “Exhibit B” is a true and correct copy of the March 16th, correspondence. The IRS requested said extension pursuant to 5 U.S.C. § 552(a)(6)(B)(i). The extended deadline to respond was April 2, 2009.

8. Plaintiff did not receive the requested information by April 2, 2009. Indeed, to date, 25 days after the expiration of the extension, Plaintiff has yet to receive any of the information requested in its February 3, 2009 FOIA request.

9. The IRS has improperly withheld the requested documents from Plaintiff.

10. Plaintiff was deemed to have exhausted its administrative remedies because the IRS failed to comply with the applicable time limits. 5 U.S.C. § 552 (a)(6)(C).

11. On March 24, 2009, five days after the initial twenty-day deadline, the IRS indicated that Plaintiff's FOIA request had been transferred to the Disclosure Manager in the Headquarters' FOIA unit. Attached hereto and incorporated by reference as "Exhibit "C" is a true and correct copy of the March 24th correspondence.

Count 1: Declaratory Relief

12. Plaintiff re-alleges paragraphs 1 through 11 as if restated herein.

13. The actions of the IRS, as stated above, are a violation of the FOIA, 5 U.S.C. § 552 *et. seq.*, as amended.

14. Plaintiff is harmed by Defendant's refusal to timely produce the requested documents as Plaintiff is being deprived of the requested information which Plaintiff has a statutory right to obtain.

Count 2: Injunctive Relief

15. Plaintiff re-alleges paragraphs 1 through 11 as if restated herein.

16. The improper withholding of the requested documents has irreparably harmed Plaintiff by preventing it from reviewing the documents in Defendant's possession and by depriving Plaintiff of the invaluable statutory right conferred by Congress to obtain the requested information pursuant to the FOIA.

17. As such, Plaintiff is likely to succeed on the merits because the IRS has failed to comply with its statutory obligation.

18. The granting of the requested relief will not result in greater harm to the IRS because an agency can withhold documents pursuant to numerous statutory exceptions.

19. Furthermore, the granting of the requested relief will be in the public interest because Congress, in enacting the FOIA, has manifested its belief that transparency in government is in the public interest.

20. This Court has jurisdiction to enjoin the IRS from withholding its records and to order the production of the records improperly withheld from the Plaintiff pursuant to 5 U.S.C. §552(a)(4)(B).

Prayer for Relief

WHEREFORE, the Plaintiff prays that this honorable Court:

- (A) Order and declare that Plaintiff is entitled to the improperly withheld information;
- (B) Order Defendant to disclose the requested records in their entireties and make copies available to Plaintiff;
- (C) Provide for expeditious proceedings in this action;
- (D) Award Plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- (E) Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/Joseph A. DiRuzzo, III
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